United Nations A/58/330

General Assembly

Distr.: General
28 August 2003

Original: English

Fifty-eighth session
Item 119 (b) of the provisional agenda*
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to food

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Commission on Human Rights on the right to food, Jean Ziegler, in accordance with General Assembly resolution 57/226.

* A/58/150.

** This report is submitted with delay owing to the current difficult circumstances at the Office of the High Commissioner for Human Rights which slowed down the document clearance process.

03-48416 (E) 300903

Summary

The United Nations Special Rapporteur on the right to food hereby submits his third annual report to the General Assembly.

The Special Rapporteur would reiterate to the General Assembly the importance of the right to food as a human right. It is a right that must be realized if hunger is to be eradicated around the world. The Special Rapporteur bears witness to the fact that little progress is currently being made in reducing hunger, despite promises made by Governments at the World Food Summit: five years later to halve the number of victims of hunger by 2015. In fact, according to the Food and Agriculture Organization of the United Nations, the number of undernourished people around the world increased in 2002 to 840 million people from 815 million in 2001. It is an outrage that hunger persists in a world where more than enough food is now produced to feed the global population. It is time to recognize that the neoliberal economic model is producing great wealth but is simultaneously leaving many in great poverty, struggling to feed themselves.

This report opens with an introduction and overview of the activities of the Special Rapporteur over the last year, before moving on to two conceptual chapters. The aim of these chapters is to further develop the conceptual framework and address difficult and pressing issues relating to the right to food. These issues include gender and the right to food, and transnational corporations and the right to food. A further chapter examines emerging examples of good practice and positive developments occurring with respect to the right to food around the world.

The chapter on gender issues looks at gender relations that can have a negative impact on the right to food. Despite important advances in the legal framework for the protection of women, there still remain patterns of discrimination that prevent the full realization of women's right to food, including for example, traditions that women should eat less than male members of the family — a custom that can result in significant gender disparities in levels of malnutrition.

The chapter on transnational corporations and the right to food takes as its starting point the fact that, in many respects and in many regions of the world, transnational corporations now have unprecedented control over the food system, yet there is no coherent system of accountability to ensure that they do not abuse this power. Just as human rights were originally developed to put limits on abuses of power by States, they must now be developed to circumscribe abuses of power by corporations. This chapter therefore tries to outline the legal framework that seeks to hold corporations to respect for human rights, particularly the right to food.

The final chapter describes positive developments in two countries — Brazil and Sierra Leone — before closing with the conclusions and recommendations of the Special Rapporteur.

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I. Introduction

1. The Special Rapporteur on the Right to Food has the honour to submit his third report to the General Assembly in accordance with resolution 57/226 and Commission on Human Rights resolution 2003/25.

2. The mandate of the Special Rapporteur on the right to food is contained in Commission on Human Rights resolutions 2000/10 and 2001/25. This year, the Commission decided to extend the mandate of the Special Rapporteur for a further three years; this was endorsed by the Economic and Social Council in its decision 2003/244.

3. The right to food is a human right, protected under international human rights and humanitarian law. It has been authoritatively defined in general comment No. 12 of the Committee on Economic, Social and Cultural Rights as follows: "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement (para. 6)." Inspired by the general comment, the Special Rapporteur has adopted a working definition of the right to food:

> "The right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear" (E/CN.4/2001/53, para. 14).

4. Despite the numerous commitments of Governments to eradicate hunger and to realize the right to food, hunger, food insecurity, malnutrition and violations of the obligations to respect, protect and fulfil the right to food persist across the world, both in the North as well as in the South. According to the Food and Agriculture Organization of the United Nations (FAO), progress in reducing world hunger has virtually come to a halt.[1] Promises made at the World Food Summit to cut by half the number of undernourished people have come to little, as few countries have been able to report progress in reducing the victims of hunger.[2] The number of undernourished people around the world increased in 2002 to 840 million: 799 million in developing countries, 30 million in countries in transition and 11 million in industrialized countries.[3] Every seven seconds a child under the age of 10 dies, directly or indirectly, of hunger somewhere in the world.[4] More than 2 billion people worldwide suffer from "hidden hunger", or micronutrient malnutrition, which has effects that are not always immediately visible; micronutrient deficiencies mean that children fail to grow and develop normally, their bodies are stunted and sometimes deformed, but so are their intellectual capacities and their immune systems, condemning them to a marginal existence. Hunger also has effects through the generations, as undernourished mothers give birth to children that will never fully develop, condemning whole countries to underdevelopment. All this in a world which, according to FAO, already produces more than enough food to feed its population.

5. In this introduction, the Special Rapporteur will take the opportunity to report on his activities to promote and monitor the right to food. Over the last year, the Special Rapporteur has engaged in numerous activities relating to the mandate. He has carried out two country missions — one to Bangladesh (24 October-4 November

2002) and one to the Occupied Palestinian Territories (3-12 July 2003). The Special Rapporteur also reported to the Commission on Human Rights in April 2003 (E/CN.4/2003/54 and Add.1 and 2). That report examined new initiatives at the international level with respect to the development of the protection of the right to food (the voluntary guidelines on the right to food) and the right to water (general comment No. 15 on the right to water of the Committee on Economic, Social and Cultural Rights). In line with the resolution of the Commission on Human Rights, in which the Commission called upon the Government of the Democratic People's Republic of Korea to cooperate with the thematic procedures, in particular the Special Rapporteur on the right to food (2003/10, para. 2 (e)), the Special Rapporteur has requested permission from the Government to carry out a mission to that country and, in view of the urgency of the situation in Myanmar, has also requested an invitation to undertake a mission there. He urges the Governments of the Democratic People's Republic of Korea and Myanmar to respond to his requests and authorize the missions.

6. Over the year, and in accordance with his mandate, the Special Rapporteur has also contributed to the follow-up to the World Food Summit: five years later, attending the first meeting in March 2003 of the Intergovernmental Working Group which will develop international voluntary guidelines on the right to food. Two submissions on the form and content of the guidelines have been submitted to FAO. It is vital that these guidelines provide concrete and practical advice on how to implement the right to food and that they strengthen, rather than weaken, the current legal protection of the right to food. In February 2003, he also participated in an expert consultation organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare its submission on the voluntary guidelines to the Working Group, and his research team has participated in a number of meetings with non-governmental organizations (NGOs) to raise awareness and encourage civil society participation in the development of these guidelines.

7. The Special Rapporteur and his team have also worked to raise awareness through teaching a seminar at the Graduate Institute of Development Studies of the University of Geneva on "Theory and practice of the defence of economic, social and cultural rights". A number of outstanding leaders in the human rights academic field participated in the seminar, contributing in their key fields of expertise, including Dr. Dzidek Kedzia, Chief of the Research and Right to Development Branch at OHCHR, Dr. Giorgio Malinverni, Professor of Constitutional Law at the University of Geneva, Dr. Andrew Clapham, Professor of International Law at the Graduate Institute of International Studies in Geneva, and Jean-Daniel Vigny, Minister at the Permanent Mission of Switzerland to the United Nations Office at Geneva.

8. The Special Rapporteur has also been monitoring and recording violations of the right to food across the world and he urges Governments to respond rapidly to his appeals in this regard. He has recently sent out letters to the Governments of Colombia, India and Argentina and awaits their responses. He has also intervened several times in Brazil, in relation to allegations of human rights violations occurring at the Usina Aliança sugar mill in Pernambuco, where peasant communities are fighting for their rights to land on land that is slated for expropriation. The Special Rapporteur has worked with the Brazilian national Special Rapporteur on this case, and urges the Brazilian authorities to examine the

situation, protect the communities from human rights violations and facilitate the peasant communities' access to land. He has also written to the Government of Brazil with respect to the terrible situation in the police station holding cells in São Paulo (44th *delegacia*), but is still awaiting a formal response. He has also collaborated with the Committee on Economic, Social and Cultural Rights during its examination of the report of Brazil under the International Covenant on Economic, Social and Cultural Rights.

9. At the same time as monitoring allegations of violations, the Special Rapporteur has also followed positive developments with respect to the right to food in different national contexts, including developments in Brazil's programme "*Fome Zero*" ("Zero Hunger") and new developments in Sierra Leone. In following up on his mission to Brazil, the Special Rapporteur has maintained particularly close contacts with the Brazilian authorities. He had the honour to be invited to the inauguration of President Luiz Inácio Lula da Silva in January 2003 and participated in a long discussion on the right to food in Brazil with the President and his principal ministers and advisers. He urged the President to adopt a rights-based approach to his Zero Hunger programme. He has further followed positive developments in Sierra Leone and a member of his team participated in the "Symposium to operationalize the right to food in Sierra Leone" held in Freetown in May 2003. He reports on developments in Brazil and Sierra Leone in chapter IV.

10. The Special Rapporteur and his team have also attended numerous other meetings to promote the right to food, including the World Social Forum in Porto Alegre, Brazil, in January 2003, giving presentations and participating in programmes and training courses of Action contre la faim in Paris in March and May 2003, and attending the inaugural conference of a network of organizations working on economic, social and cultural rights in Thailand in May 2003. The Special Rapporteur was also honoured to be invited to speak on the occasion of the round table on human rights organized by the Government of Switzerland in May 2003. Contacts have also been maintained and established with numerous organizations at both governmental and non-governmental levels and with United Nations agencies. The Special Rapporteur has also published a short book on the right to food.[5]

11. The Special Rapporteur has also continued to develop the conceptual basis for his work on the right to food, building up a corpus of reports which build on previous reports. The present report introduces two new thematic issues — gender and the right to food, and transnational corporations and the right to food. The relevant chapters outline the developing legal frameworks, but also highlight some of the problems with respect to these dimensions of the right to food. In another chapter, the Special Rapporteur then reports on current positive developments occurring with respect to the right to food in Brazil and Sierra Leone, before drawing final conclusions and recommendations.

II. Gender and the right to food

12. In its resolution 2001/25, the Commission on Human Rights requested the Special Rapporteur to mainstream a gender perspective in his work. In response to this request, he has examined gender relations and the particular issues affecting women in relation to the right to food, particularly during his country missions. In

this chapter, an attempt is made to draw some preliminary observations on the linkages between gender and the right to food.

13. Women are disproportionately affected by hunger, food insecurity and poverty, largely as a result of gender inequality and their lack of social, economic and political power. In many countries, girls are twice as likely to die from malnutrition and preventable childhood diseases as boys, and it is estimated that almost twice as many women suffer from malnutrition as men. Unfortunately, however, there are still no global statistics on malnutrition or undernourishment rates disaggregated for men and women.

14. Yet women are key to food security. Women play vital roles in the production and preparation of food, in agriculture and in earning incomes to feed their families, and as mediators of nutrition education within the family, if they themselves are educated. And it is increasingly recognized that the health of women is crucial to the health of whole societies, as malnourished women are more likely to give birth to malnourished and underdeveloped babies. In countries where there are high rates of children dying before the age of five, this is being increasingly linked to maternal malnutrition. New scientific evidence in nutrition calls for a "life-cycle" approach to nutrition which recognizes the intergenerational links in nutritional status.[6] Underweight and malnourished mothers are more likely to give birth to underweight babies, whose mental and physical capacities may be severely stunted. Régis Debray has called these children "crucified at birth".

International instruments protecting women's right to food

15. Enormous progress has been made across the world in recent years in developing legal instruments to address discrimination and protect women. This section looks at some of the international instruments which protect women's right to food, highlighting articles that can be used to improve the protection of women's right to food. The following section, however, will move on to look at the continued difficulties in relation to gender and the right to food.

16. Women's right to food is protected, both explicitly and implicitly, in a wide range of international and regional human rights instruments. The strongest protection of the human right to food is found in the International Covenant on Economic, Social and Cultural Rights (arts. 3 and 2 (2)), which also contains guarantees of non-discrimination and of equal enjoyment for women of these rights. The right to food requires that Governments respect, protect and fulfil the right to food for their citizens and an interpretation based on gender must recognize that this could imply taking specific and different actions for women. General comment No. 12 of the Committee on Economic, Social and Cultural Rights, the authoritative definition of the right to food, also states that government policies to realize the right to food

> "should give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families (as stipulated in article 7 (a) (ii) of the Covenant); maintaining registries on rights in land (including forests)" (para. 26).

17. Women's rights are most fully protected in the Convention on the Elimination of All Forms of Discrimination against Women. Although the Convention does not explicitly refer to the right to food as such, it does protect women's equal access to land, credit, income and social security or safety nets, which are all essential elements of the right to food. As one example, article 14 (g) demands equal treatment in land and agrarian reform. Article 16 (h) ensures equal rights in terms of the ownership of property. A useful resource on women's rights to land and other resources is the document published by FAO entitled *Gender and Law – Women's Rights in Agriculture*,[7] which gives a full overview of different rights of women under different legal systems around the world, at both international and national levels. During times of armed conflict, special protection is also granted to women and their right to assistance, including food, under international humanitarian law (see E/CN.4/2002/58, paras. 72-106).

18. Women's rights are also strongly protected under provisions on equality and non-discrimination in many international legal instruments, including the conventions of the International Labour Organization.[8] At the national level, numerous laws also prohibit discrimination and provide for equality of women, and States are required to act with due diligence to prevent, investigate and punish discrimination and violence against women committed by the State or private actors.[9] It should also be recognized that within the context of economic, social and cultural rights, including the right to food, the obligation of non-discrimination is an immediate obligation and is therefore not limited by the provision for progressive realization applied to other obligations under the International Covenant on Economic, Social and Cultural Rights (art. 2 (2)), but must be implemented immediately.

Gender dimensions of the right to food: preliminary observations

19. Although significant advances have been made in developing legal protections for women, including protection of the right to food, there remains a gap between principle and practice in many contexts around the world. Even where legislation exists, women do not always have access to justice or the laws may not be enforced, and legal equality does not always amount to substantive equality. While advances have been made in women's formal rights, this has not been accompanied by adequate attention to making these rights meaningful and substantive so the real impact of international instruments on women's lives remains limited. Women continue to suffer de facto discrimination in access to and control over food, land, and incomes and other resources.

20. Intra-household discrimination in the distribution of food and income can severely affect women's right to food. As Amartya Sen so graphically illustrated in his article "More than 100 million women are missing", discrimination against girl children can result in high child malnutrition and high female mortality, with young girls dying from malnutrition and neglect.[10] During the Special Rapporteur's mission to Bangladesh, he found a marked gender disparity in malnutrition levels, with far more girl children underweight and stunted than boy children. In Bangladesh, social and cultural customs demand in many regions that women eat last, after the male members of the family, which also means that women often eat least, contributing to high rates of female mortality. In Bangladesh discrimination and devaluation of women are sometimes expressed in other very violent ways, including acid-throwing, where a woman is intentionally disfigured as an act of

vengeance, often leaving her unable to marry and with difficulties in finding work to feed herself. In cases where the private sphere is a key site of gender discrimination and subordination, addressing discrimination means moving beyond the public/private dichotomy, where the family is categorized as "private" and beyond the reach and responsibility of the State, towards taking concrete action to change perceptions of gender relations within the private sphere.

21. Continued discrimination in the workplace also means that the incomes of women are still less than those for men, leaving them less able to feed themselves and their families, particularly in the case of female-headed households. While women are increasingly being incorporated into the workforce, the terms of this incorporation are often exploitative, particularly in the low-skill, low-wage sectors. Increasing deregulation and the relaxation of labour laws under neoliberal policy strategies also make it harder for women to demand better wages and conditions, adding to the growing feminization of poverty. At the other end of the spectrum, much of women's work in the home and in agriculture is still not recognized as a productive activity, and this invisible labour is rarely remunerated. As a result, women are frequently economically dependent on men, which reinforces their lack of power and is often the reason that violence of different forms against women is often unreported. During the Special Rapporteur's visit to Brazil (see E/CN.4/2003/54/Add.1), he also found that gender discrimination often intersects with other forms of discrimination, such as race. In Brazil, for example, poverty and hunger is predominantly black.[11] The level of poverty for Afro-Brazilians is double that for Whites and Afro-Brazilian men earn on average less than 42 per cent of the salary earned by white Brazilians. Yet the salaries of Afro-Brazilian women are significantly lower than that as they suffer from double discrimination of both gender and race (see E/CN.4/1996/72/Add.1).

22. Women also face great difficulties in gaining secure access to and control over other resources, such as land, water and credit, as they are often not recognized as producers or juridical equals. Access to credit and secure land tenure is often denied to women because they are not officially recognized by government authorities as food producers or agricultural workers. Without access to productive resources, women's economic independence and ability to feed themselves are limited. According to FAO, while the proportion of women heads of rural household continues to grow, reaching more than 30 per cent in some developing countries, less than 2 per cent of all land is owned by women.[12] Customs and traditions in many parts of the world limit women's equal access to productive resources. In some countries, however, this discrimination is codified in customary law.

23. During the Special Rapporteur's mission to Niger (see E/CN.4/2002/58/Add.1), he found that Niger has three coexisting and complex legal systems — modern law, customary law and Islamic law. This pluralist system shows the rich legal heritage of the country, but is also a challenge to women's right to food. Customary law, in a syncretic mix with Islamic law, tends to be applied at community and family levels, but this gives women far less rights than the coexisting modern law, particularly with respect to inheritance rights. For example, custom permits child marriage of young girls, which, if consummated at too early an age, can have serious health effects, tearing apart their organs and resulting in a condition called fistula which also results in incontinence. This leads to their repudiation by their husbands, leaving them with little means of survival, often unable to feed themselves. The Special Rapporteur was also concerned by the large

number of reservations that the Government has entered upon its accession to the Convention on the Elimination of All Forms of Discrimination against Women on the grounds of culture and custom, but which renders effectively meaningless much of the protections offered by the Convention. Clearly, there is a need to protect culture and difference, but that should not lead to the persistence of discrimination against women.

24. Gender blindness in policy development can also lead to the persistence of women's inequality and disproportionately affect their right to food. Policies of structural adjustment, deregulation and privatization often appear to be gender neutral, but their impacts on men and women are very different. The costs of economic restructuring, for example, are often disproportionately borne by women. It is vital to examine the gender-differentiated effects of economic restructuring under the current dominant economic model supported by the World Bank, the International Monetary Fund and the World Trade Organization, which calls for a downsizing of State responsibility for social policy. While social policy used to revolve around issues of redistribution, universal provision and reducing levels of inequality, it now focuses on targeting the "poorest of the poor". This aims to "reduce poverty and destitution, but is unconcerned about the overall distribution of income and wealth within society".[13] As many women's rights advocates have pointed out, substantive equality for women will never be reached unless the State takes concrete positive action to improve the position of women relative to men. Formal equality of human rights is not enough — in fact, formal equality of rights will even generate inequality, if initial starting points and different disadvantages of men and women are not considered. The downsizing of the State reduces the capacity of the State to take positive action, despite the fact that under human rights treaties, most Governments have signed up to international human rights commitments to respect, protect and fulfil the right to food of women — that is, to take concrete positive action to address the issues of discrimination facing women and to ensure their substantive equality.

Preliminary observations

25. The right to food places obligations on the State to respect, protect and fulfil the right to food. Undertaking these obligations must be understood in a way that respects gender difference, understands existing obstacles facing women and seeks to improve the situation. In the first instance, the obligation to respect the right to food for women means that the State is obliged to refrain from doing anything that impedes women's existing access to food, water, land, income or other resources. The obligation to protect the right to food for women means that the State is obliged to protect women from all forms of discrimination by non-State actors, including discrimination in the workplace, in the private sphere, and in access to resources. The obligation to fulfil the right to food for women means that Governments have a positive obligation to create an enabling environment to ensure that women have sufficient access to resources to be able to feed themselves and, in the final resort, to support women who, for reasons beyond their control, cannot feed themselves. This positive obligation means that the State must take concrete positive action to improve the substantive equality of women and to challenge norms, traditions and customary laws that legitimate discrimination and violence against women, including within the family and within the household, particularly in relation to the allocation of food.

26. In this chapter, the Special Rapporteur has attempted to map out preliminary observations on the basis of the insights gained from the country missions that he has carried out to date. It will, however, also be important to conduct a further more in-depth study on gender and the right to food in the future in order to draw out the significant progress that has been made, in particular in jurisprudence and in the development of strategies for gender equality at national and regional levels, particularly in the context of the right to food.

III. Transnational corporations and the right to food

27. Under the terms of the mandate given by the Commission on Human Rights, the Special Rapporteur is charged with identifying "emerging issues related to the right to food worldwide" (resolution 2000/10, para. 10 (c)). This chapter sets out to examine one issue that is becoming increasingly important for the realization of the right to food: the human rights obligations of transnational corporations (TNCs) in light of the fact that corporations are exerting increasing control over the production and provision of both food and water. Given this increasing control over the food system, it is argued that transnational corporations must take responsibility and bear obligations with respect to ensuring human rights, including the right to food. This chapter outlines the obligations of transnational corporations to respect the right to food under international human rights law.

28. As pointed out by the United Nations Development Programme (UNDP), "Global corporations can have enormous impact on human rights — in their employment practices, in their environmental impact, in their support for corrupt regimes or in their advocacy for policy changes".[14] Today, transnational corporations often have revenues many times greater than the revenues of the Governments of the countries in which they are operating. According to the United Nations Conference on Trade and Development (UNCTAD), "Twenty-nine of the world's 100 largest economic entities are transnational corporations (TNCs)."[15] The top 200 corporations are estimated to control a quarter of the world's productive assets.[16] As financially powerful lobbying groups, corporations can also exert great control over laws, policies and standards applied in their industries, which can result in looser regulation and negative impacts on health, safety, and the price and quality of food.

29. The Special Rapporteur has received repeated appeals from non-governmental organizations to examine the human rights obligations of transnational corporations in the context of their increasing control of the food sector, from production to the processing and marketing of food. For example, many members of the over 400 non-governmental and civil society organizations attending the parallel NGO/CSO Forum on Food Sovereignty in Rome in 2002 raised concerns regarding increasing concentration in and monopoly control over the global market for agricultural seed, in particular the genetically modified seed market, which is dominated by the Monsanto corporation. Although it is generally agreed that genetically modified seeds can in some conditions bring higher yields, NGOs are concerned that increasing control over seeds by a few agro-alimentary corporations will eventually reduce competition, reduce choice and may lead to higher prices for seeds. Many organizations, including FAO, are also concerned that current biotechnology research is driven by commercial imperatives and does not focus on the food security needs of the poorest.[17] It is widely agreed that hunger persists, not because

a shortage of food supply, but rather because of very low incomes and unequal access to land, water, credit and markets. NGOs and farmers are particularly concerned by technologies that prevent seeds from regenerating and by the use of intellectual property rights over seeds, which requires farmers to purchase new seeds every year, threatening their independence and capacity to generate their own seed stocks. Although it is clear that the patent rights of corporations must be protected, the rights of small farmers must also be protected.[18] And, as Oxfam has pointed out, the rights of consumers must simultaneously be protected, through regulation, labelling, precautionary approaches and legislation on company liability for potential harmful effects on people or the environment.[19]

30. As another example, several NGOs raised concerns that, as one of the largest food processing corporations in the world, Nestlé dominates the market for breastmilk substitutes in many countries around the world, yet its marketing practices violate the internationally agreed International Code of Marketing of Breastmilk Substitutes. They allege that some Nestlé advertising has been found to discourage breastfeeding and to promote bottle feeding, which runs contrary to the Code.[20] United Nations agencies, including the United Nations Children's Fund (UNICEF), have expressed similar concerns.[21]

31. It is often assumed that corporations are neutral providers of goods and services and that market forces have everyone's interest at heart. However, it is becoming increasingly clear that monopoly control of the food system by transnational corporations can be directed towards seeking monopoly profits, benefiting the companies more than the consumer. The actions of transnational corporations can sometimes directly violate human rights standards, including the right to food. Despite the fact the transnational corporations increasingly control our food system, there are still relatively few mechanisms in place to ensure that they respect standards and do not violate human rights. As former Secretary-General Boutros Boutros-Ghali stated in 1996, "the global reach of TNCs is not matched by a coherent global system of accountability". There is no existing "social contract" between individuals and TNCs. Over the centuries, human rights standards were developed to ensure that Governments do not abuse their power but, in an age where corporations are now more powerful than Governments, it is becoming imperative to extend the scope of application of human rights norms to ensure that corporations do not abuse their new-found power.

32. Under the traditional application of human rights law, it is usually only possible to hold a Government to account for violations of human rights; it is still not well understood how a corporation could be held to account for human rights violations. However, new developments are occurring within the study of human rights and it is now increasingly understood that there are two key ways of holding corporations to respect human rights — one indirect, the other direct. The first way derives from the fact that Governments retain a duty to protect people against any negative impacts that transnational corporations' activities might have on the right to food, which means that Governments must monitor and regulate corporations, at home and outside their borders. The second way is to impose direct obligations on the corporations, through the development of direct human rights obligations, intergovernmental instruments and voluntary commitments.

Obligation of the State to protect — indirect obligations

33. The right to food imposes three levels of obligations on the State: the obligations to respect, protect and fulfil the right to food. It is the obligation to *protect* the right to food which is the most important obligation in this context, because it implies that Governments must regulate corporations to ensure that they do not commit violations of human rights.

34. So what does the obligation to protect mean? According to the Maastricht Guidelines (see E/C.12/2000/13):

> "The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors (para. 18)."

35. The Committee on Economic, Social and Cultural Rights underlined in its general comment No. 12 on the right to food that "the obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food" (para. 15). "As part of their obligations to protect people's resource base for food, States parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food" (para. 27). In relation to water, which is inherently linked to the right to food (see E/CN.4/2003/54, paras. 36-51), the Committee clarifies in general comment No. 15 that the obligation to *protect* includes "adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems" (para. 23). For the Committee, water is a public good fundamental for life and health (para. 1). Therefore, where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, an effective regulatory system must be established which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance (para. 24).

36. In the now infamous case of Cochabamba, Bolivia, the Government sold off the public water to Aguas del Tunari, a subsidiary of the transnational corporation Bechtel, in 1999. The company immediately announced an increase in water prices by up to 35 per cent, which for many Bolivians meant that water was no longer affordable (see E/CN.4/Sub.2/2003/9). A public outcry led to broader civil unrest and the Government declared martial law to control the protests, but finally revoked the water privatization legislation.

37. The most important way to ensure respect for the rights to food and water is to put in place effective domestic legislation to protect people from violations by third parties, including transnational corporations — laws and regulations that protect access to land, drinking water, water for irrigation and a minimum income, and that prohibit interference with people's family or community means of subsistence, etc. — and provide effective administrative and judicial remedies.

38. At the national and regional levels, the obligation to protect human rights is well established in the jurisprudence.[22] For example, in a key decision for the right

to food issued in 2001, the African Commission on Human and Peoples' Rights was faced with a complaint focused on the behaviour of an oil consortium between the State oil company and Shell in Nigeria. In this case, the Commission found violations of the African Charter in several respects, but, in particular, it referred to the obligations of States with regard to private actors in the context of the right to food. For the African Commission, "The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens. Without touching on the duty to improve food production and to guarantee access, the minimum core of the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' effort to feed themselves."[23] This courageous decision must be implemented and should be seen as an example to follow in other similar cases. Case law also exists at the national level, including in South Africa where the Constitution (arts. 7 and 27) obliges the State to protect the right to food, and in India where the Supreme Court stated that the Union and all the state governments shall protect the right of the workers to have access to medical facilities and drinking water.[24]

39. Other ways also exist in which States can *protect* the right to food of their citizens. For example, some States have taken action to ensure that their national law imposes human rights obligations on transnational companies. Jurisprudence is also emerging that demonstrates that it is possible to hold corporations responsible for violations of human rights, including the right to food. In South Africa, according to article 8 of the Constitution, the Bill of Rights applies to a natural or a legal person, which means that a transnational corporation could be held accountable for a violation of the right to food. In Uganda and Namibia, privatization has been accompanied by an extension of the ambit of their respective national Ombudsman's Office and Human Rights Commission to monitor the activities of the privatized entities.[25] In India, the Supreme Court held corporations accountable for violations of human rights, including the right to water.[26] Twenty-five countries have implemented the International Code of Marketing of Breastmilk Substitutes — a code applying to the behaviour of transnational corporations — in national law.[27]

40. Governments also have a responsibility to monitor and regulate the activities of their transnational corporations abroad. This means that "home" States should put in place effective domestic regulation and monitoring mechanisms and provide effective remedies for violations of the right to food if these occur. General comment No. 15 states that "Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries" (para. 33). Examples of ways to protect human rights abroad are "foreign direct liability" cases in Australia,[28] Canada[29] and in the United Kingdom,[30] in which transnational corporations are held responsible before home States' jurisdictions (under tort law) for violations of human rights abroad. Another interesting example is the Alien Tort Claim Act in the United States, under which any transnational corporations (not only those based in the United States) can be held accountable for complicity with human rights violations in other countries.[31] The European and Australian Parliaments, which have called for regulation over the activities of their transnational corporations in other countries, also have taken this obligation into account.[32]

41. Finally, home States have the obligation not to pressure the host State not to regulate the activities of transnational corporations. This has been taken into account, for example, in the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development by which OECD member States agreed that enterprises should "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments" (para. II.2), and that "Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law" (para. I.7). By this agreement, OECD member States shall use their influence to protect human rights, including the right to food, with regard to the activities of transnational corporations in host States.

Direct obligations of TNCs in international human rights law and standards

42. States have the primary responsibility to promote and protect human rights, and, as the European Court of Human Rights stated, a State "could not absolve itself of responsibility by delegating its obligations to private bodies or individuals".[33] However, transnational corporations should be bound to respect the national law of the host State in which they operate and of the home State in which they are based. It is also becoming increasingly clear that, under international law, intergovernmental organizations' instruments and voluntary commitments, transnational corporations can be held responsible for promoting and securing human rights.

43. The Universal Declaration of Human Rights proclaims that the obligation to promote respect for human rights and to secure their universal and effective recognition and observance is addressed not only to States but also to "every individual and every organ of society". This must include transnational corporations. This interpretation has been confirmed by the General Assembly (see resolution 42/115) and by the Commission on Human Rights (see resolution 1987/18, para. 4), in which TNCs were urged to ensure that their activities did not adversely affect the process of implementing human rights in developing countries (para. 4).

44. Transnational corporations should also take into account in their activities the International Covenant on Economic, Social and Cultural Rights. As the Committee on Economic, Social and Cultural Rights states in its general comment No. 12 on the right to food:

> "While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society — individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector — have responsibilities in the realization of the right to adequate food" (para. 20).

45. There have also been important initiatives to develop the normative base for direct obligations for corporations. For example, the Sub-Commission on the Promotion and Protection of Human Rights and its working group on transnational corporations has adopted the "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights" (E/CN.4/Sub.2/2003/12/Rev.2) based on existing international human rights instruments. This important document states that "Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of

and protect human rights recognized in international as well as national law" (para. 1). According to the Norms, transnational corporations "shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization, in particular the rights to ... adequate food and drinking water ... and shall refrain from actions which obstruct or impede the realization of those rights" (para. 12). This is an important attempt to extend human rights, including the right to food, beyond the State-centric paradigm. It also tries to extend the obligations beyond the parent company to include all the suppliers to ensure that companies cannot deny obligations on the basis that they are not operating directly, but have contracted out much of their production or activities to local suppliers (para. 15). The Sub-Commission decided to transmit the Norms to the Commission on Human Rights for consideration and adoption (resolution 2003/16).

46. Other initiatives include declarations and guidelines that have been adopted by intergovernmental bodies and which serve as useful instruments to evaluate the activities of transnational corporations, even if they are not binding. The most important are the OECD Guidelines for Multinational Enterprises (revised in 2000) and the 1977 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, both of which apply to States and to transnational corporations. According to the ILO Tripartite Declaration transnational corporations "should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organization and its principles ...". (para. 8).

47. According to the OECD Guidelines, all Adhering Governments (the OECD States, Argentina, Brazil and Chile) are bound to establish national contact points to disseminate information about the Guidelines and can handle a complaint about violations by a transnational corporation. In a number of instances, cases have been put to the OECD complaints mechanism by non-governmental organizations where human rights have been violated by a corporation.

48. Other important intergovernmental instruments applying to transnational corporations' activities include the International Code of Marketing of Breastmilk Substitutes adopted by the World Health Organization and UNICEF and the Code of Ethics for International Trade in Food adopted by the Codex Alimentarius Commission. The Secretary-General's Global Compact initiative, by which transnational corporations can commit themselves to "support and respect the protection of internationally proclaimed human rights within their sphere of influence" and "make sure that they are not complicit in human rights abuses" is also an important initiative and could be a powerful mechanism for ensuring accountability if monitoring mechanisms could be put in place.

49. Many companies themselves have also initiated their own policies or practices that recognize the importance of respecting human rights. Initiatives taken include signing up to codes of conduct. In 1999, OECD inventoried 233 codes of conduct, issued mostly by individual corporations.[34] Several companies now have their own policies on human rights. The Shell corporation, for example, now has a policy on how to protect human rights and when to speak out about human rights violations.

Reebok has a policy on child labour, and Nestlé has incorporated into its corporate business principles the standards set out in ILO conventions, the Global Compact principles and the International Code of Marketing of Breastmilk Substitutes. While some of these policies amount to little more than improving their public image, in some cases, corporations are taking real action to respect human rights. Civil society can also help to improve the enforcement and implementation of principles that corporations have signed up to by monitoring their compliance with human rights principles. The new international voluntary guidelines on the right to food, which are currently being elaborated as part of the follow-up to the World Food Summit: five years later, should also serve to strengthen the framework governing the responsibilities of corporations with respect to the right to food.

Recommendations

50. **According to international human rights law and the commitments made in intergovernmental instruments, both host and home States have obligations to protect people against any negative impacts that transnational corporations' activities might have on the right to food. Transnational corporations also have direct obligations regarding the right to food under international human rights law, as well as national legislation, intergovernmental instruments and voluntary codes of conduct.**

51. **Transnational corporations should respect the international human rights treaties, national legislation and intergovernmental instruments and adhere to the codes of conduct to which they have committed themselves. However, it is important to admit that monitoring mechanisms remain limited, and transnational corporations are still rarely under scrutiny for their respect of human rights. It is therefore vital to strengthen monitoring mechanisms. Non-governmental organizations should have a crucial role to play in order to help States, human rights mechanisms and the transnational corporations themselves to ensure the fulfilment of all human rights, including the right to food. Special rapporteurs could also play an important role in monitoring the actions of transnational corporations. This could represent a valuable monitoring mechanism that can help transnational corporations to fulfil their human rights obligations.**

IV. Positive developments in promoting the right to food

A. Brazil

52. In Brazil, a vibrant, dynamic and comparatively wealthy nation, a new President came to power in January 2003, whose first priority is to eradicate hunger in Brazil, through his programme "Zero Hunger", a pioneering example to follow for the realization of the right to food. Through this programme, President da Silva hopes to eradicate hunger and malnutrition in Brazil over the next four years.

53. As the Special Rapporteur witnessed during his mission to Brazil in March 2002 (see E/CN.4/2003/54/Add.1), the country is now the tenth largest economy in the world and one of the world's largest food exporters, yet Brazil is still failing to feed its own people. Millions of Brazilians continue to suffer from hunger and malnutrition. Around 54 million people live below the poverty line and 22 million

people in Brazil live below the extreme poverty line, which means that they cannot afford to buy a food basket that provides the minimum caloric intake requirement of one individual per day. Food insecurity is largely due to poverty and lack of access to, and control over, resources, including land. Numerous violations of the right to food continue to occur, as persistent clientelism and vast inequities in access to resources limit the ability of the poorest to feed themselves. Eradicating hunger and reducing extreme levels of social inequality in Brazil will be essential to social stability and development.

54. President da Silva's "Zero Hunger" programme consists of a series of 41 measures that address the structural causes of hunger and seek to alleviate hunger immediately for the most vulnerable through the provision of safety nets and support, ensuring that locally specific measures are undertaken and adapted to local conditions and different livelihood patterns in rural and urban areas. The National Council for Food Security has been re-established, and will include 11 ministers from the relevant ministries and representatives from civil society and United Nations agencies. It will identify the most vulnerable groups, address discrimination and set up a coordinating mechanism that is representative and participatory. The programme clearly sets out time limits and delineates the responsibilities of different actors.

55. The Special Rapporteur recommends that other important initiatives on the right to food within Brazil should be incorporated into the programme "Zero Hunger":

(a) During the visit of the Special Rapporteur to Brazil, the then Government of President Fernando Henrique Cardoso announced the creation of a new National Council for the Promotion of the Human Right to Food in Brazil (CNPDA) within the Ministry of Justice. This is an important initiative and the Council should be constituted so as to play an important role in monitoring the realization of the right to food, as well as violations of the right to food. As such, one member of the Council should be on the National Council for Food Security to ensure a human rights focus for the programme;

(b) At the initiative of Brazilian non-governmental organizations, the post of "National Special Rapporteur" on the right to food was created, based on the United Nations model but to operate in the national context. Dr. Flavio Valente was nominated by civil society to serve for a term of three years. This initiative serves as a model for other countries around the world and it should be supported by the new Government. It would also be worthwhile for the National Special Rapporteur to play a role on the National Council for Food Security and the "Zero Hunger" programme.

56. The Special Rapporteur will continue to monitor positive developments on the right to food in Brazil. He also urges the international community, in particular the international financial institutions, to support President da Silva's programme. In particular, the financial institutions should ensure that the repayment conditions of Brazil's excessive external debt of US$ 235 billion do not prevent the implementation of this programme. In a country as wealthy and productive as Brazil, the "Zero Hunger" programme must be implemented to ensure that hunger is not allowed to persist. The Special Rapporteur emphasizes that human rights obligations have primacy over all other obligations, including those concluded under international trade agreements or debt repayment agreements.

B. Sierra Leone

57. Sierra Leone, a country devastated by war over the last 10 years, is finally moving towards peace and has made an important commitment to realizing the right to food. As part of efforts to rebuild Sierra Leone, the Government is placing vital emphasis on ensuring the right to food and food security, an effort that should be fully supported by the international community. President Kabbah, in his inaugural re-election address in 2002, made this very clear:

> "Fellow Sierra Leoneans, my own principal objective in the second leg of our journey together is centred on a basic right — the right to food. So today, with the new mandate you have given me, I shall make another pledge. This time, I pledge to work even harder, and with greater resolve, to do everything in my power to ensure that within the next five years, no Sierra Leonean should go to bed hungry."

58. Realizing the right to food must be a priority in Sierra Leone. Before the war, it was estimated in 1990 that more than 80 per cent of Sierra Leoneans lived below the poverty line of US$ 1 per day, and the average income of the poor was not enough to cover even 50 per cent of their minimum household food requirements. Today, as a result of the war, the poverty level has deepened and malnutrition levels continue to be extremely high, as do child and maternal mortality levels.[35]

59. The war in Sierra Leone was also characterized by very serious violations of human rights. Many of the human rights violations during the conflict were clear violations of economic, social and cultural rights, including the right to food, for example, systematic looting and destruction of farms, crops and livestock, and the forcible displacement of people from their homes, farms and sources of livelihood. The RUF (Revolutionary United Front) amputated the hands and feet of civilians, severely limiting their ability to feed themselves not only in the short term, but for the rest of their lives. These are clear violations of the right to food, just as the deliberate destruction of schools and health posts in many regions is a clear violation of the rights to education and health.

60. In May 2003, the Government of Sierra Leone, in collaboration with FAO, held a symposium in Freetown on "Operationalizing the right to food in Sierra Leone", which was attended by a representative of the Special Rapporteur. This symposium was an important first step in making progress on the President's pledge by developing a greater understanding of the right to food in Sierra Leone. The following preliminary recommendations are made to the Government:

(a) A national food security secretariat should be set up under the Ministry of Agriculture to determine a policy and plan of action to ensure the right to food for all Sierra Leoneans by the year 2007;

(b) The plan of action should address a number of issues, including discrimination against women, access to land and credit, food standards and appropriate use of food aid;

(c) An independent monitoring mechanism (in line with the Paris Principles) should be instituted to monitor the progressive realization of the right to food, monitor violations of the right to food and receive complaints and grievances. It would also be empowered to seek redress for violations of the right to food.

61. The Special Rapporteur welcomes these positive steps in Sierra Leone towards realizing the right to food. Many challenges face Sierra Leone in turning the President's pledge into concrete action, but an important step has been taken. Sierra Leone is a country rich in resources — diamonds, gold, and fertile soil — but these resources must be harnessed for food security to be attained, and support from the international community will clearly be necessary. The Special Rapporteur will continue to monitor developments in Sierra Leone and he urges the international community to work with the Government of Sierra Leone to realize the right to food.

V. Conclusions and recommendations

62. **The Special Rapporteur urges Governments to respect, protect and fulfil the right to food in accordance with their human rights obligations. It is clear that despite advances made in improving the legal protection of the right to food, particularly for women, much work remains to be done to reduce the gap between advocated norms and reality. Gender discrimination persists in a variety of forms that have profound effects on the right to food of women. Similarly, the activities of transnational corporations can now have profound effects on the right to food. The growing power of transnational corporations and their extension of power through privatization, deregulation and the rolling back of the State also mean that it is now time to develop binding legal norms that hold corporations to human rights standards and circumscribe potential abuses of their position of power.**

63. **The Special Rapporteur recommends that:**

(a) **All Governments take immediate action to address discrimination against women, particularly where this contributes to the malnutrition of women and girls. Social traditions that proscribe that women should eat last should be understood as a form of violence against women, particularly as this contributes to high rates of female mortality in certain regions of the world;**

(b) **All Governments should improve the enforcement and implementation of existing legislation developed to protect women. This must include respecting women's right to food and ensuring that women have equal access to resources, including income, land and water, to enable them to feed themselves;**

(c) **Governments should also take concrete action to improve the conditions of women to ensure that legal equality is transformed into substantive equality, taking note of the different starting points of men and women;**

(d) **The international financial institutions should review programmes of economic restructuring to examine their gender-differentiated effects, recognizing the important role that the State must play in reducing inequality;**

(e) **Governments should also regulate transnational corporations and their activities in the food system with a view to implementing their obligation to protect their citizens and those in other countries. Governments should also implement the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights by using them as a**

model for developing legislation and administrative provisions for corporations, and national courts should determine responsibility in the case of violations of the right to food;

(f) Transnational corporations should respect international human rights obligations, intergovernmental agreements and national legislation with respect to food security, food standards and the right to food. They should encourage independent monitoring of their activities, particularly with respect to voluntary codes of conduct to which they have committed themselves;

(g) Appropriate judicial and administrative remedies should be established for violations of the right to food, including violations committed by private actors against women and by transnational corporations;

(h) Governments should take note of the positive examples provided in different countries with respect to the right to food, notably the commitment and actions of the Governments of Brazil and Sierra Leone. They should also contribute actively and positively to the development of international initiatives, such as the voluntary guidelines on the right to food.

To die from hunger in a world of plenty is an outrage and a crime. The silent daily massacre of tens of thousands of victims of hunger on this planet must be stopped.

Notes

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[3] FAO, op. cit. at note 1.

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[17] "Genetically modified organisms in food and agriculture: Where are we? Where are we going?" Keynote address by Louise O. Fresco, Assistant Director-General, Agriculture Department, FAO, at the Conference on "Crop and Forest Biotechnology for the Future", Royal Swedish Academy of Agriculture and Forestry, September 2001.

[18] The case of Canadian farmer Percy Schmeiser raises serious concerns. See Percy Schmeiser, "Who owns the seeds?" Opinion Editorial, *San Francisco Chronicle*, 20 June 2003.

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[21] See Stephen Lewis, "Malnutrition as a human rights violation" ACC/SCN, *SCN News*, No. 18, July 1999.

[22] Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras* (1989): European Court of Human Rights, *Guerra v. Italy* (1998); Human Rights Committee, *Kitok v. Sweden* (1985).

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[24] *Consumer Education and Research Centre v. Union of India*. AIR 1995 Supreme Court 922, paras. 26-33.

[25] P. T. Muchlinski, "Human rights and multinationals: is there a problem?", *International Affairs*, vol. 77, No. 1, 2001, p. 37.

[26] *Consumer Education and Research Centre v. Union of India*, op. cit.

[27] J. Richter, *"We the peoples" or "we the corporations": critical reflections on UN-business partnerships*, Geneva International Baby Food Action Network and Geneva Infant Feeding Association, 2001, p. 5.

[28] Litigation against Broken Hill Proprietary by people living around the Ok Tedi River in Papua New Guinea.

[29] *RIQ v. Cambior*, litigated in Quebec.

[30] *Sithole and others, Thor Chemicals Holdings Ltd. and others* (1999, 2000).

[31] It applies to customary international law norms, such as the prohibition of slavery, genocide, torture, crimes against humanity and war crimes. *Wiwa v. Royal Dutch Petroleum (Shell); Bowoto v. ChevronTexaco); Doe v. Unocal.*

[32] Resolution on EU standards for European enterprises operating in developing countries: towards a European Code of Conduct (1998), Australian Parliament, Corporate Code of Conduct Bill (2000).

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